

1 MINUTES

2
3 The State Board of Elections board meeting was held on Monday, May 21, 2018.
4 The meeting was held in Senate Room 3 in the Virginia State Capitol in Richmond,
5 Virginia.

6 In attendance, representing the State Board of Elections (“the Board”) were James
7 Alcorn, Chairman; Clara Belle Wheeler, Vice Chair; and Singleton McAllister, Secretary.
8 Also in attendance, representing the Department of Elections (“ELECT”) was Christopher
9 E. “Chris” Piper, Commissioner. In attendance, representing the Office of the Attorney
10 General (“OAG”), was Anna Birkenheier, Assistant Attorney General. Chairman Alcorn
11 called the meeting to order at 10:38 AM.

12 The first order of business was to approve the minutes from the April 25, 2018
13 meeting. Secretary McAllister *moved the Board approve the minutes as presented for the*
14 *April 25, 2018 meeting.* Chairman Alcorn seconded the motion, and the motion passed
15 unanimously.

16 The next order of business was the Commissioner’s report, presented by
17 Commissioner Piper. The Commissioner reminded the Board that the last day to register
18 to vote in the June 12 primary was May 21, and said there was a statewide senate primary
19 for the Republican party and some congressional primaries; there would be some dual
20 primaries in a number of localities, but ELECT and local staff were prepared.
21 Commissioner Piper discussed meeting with continuity of operations partners to discuss
22 and prepare communication and possible threats for the upcoming election day.

23 Commissioner Piper addressed the post-election audits the Board approved during
24 the April 25 meeting. The post-election audits, requested by Prince William County and
25 the City of Norfolk, were to take place following the May 1 election; but after the May 1
26 election, ELECT discovered issues that would have prevented successful audits. The
27 Commissioner noted that Prince William County wanted to run four different types of
28 audits on four different precincts. §24.2-671.1, subsection C, required, however, that the
29 margin between the top two candidates for each office on the ballot exceeds 10 percent. In
30 three of the four precincts Prince William County planned to audit, that was not the case.
31 Virginia Code also requires that the statutory period of time after an election during which

32 a recount may be requested must expire before an audit can be conducted. For both Prince
33 William County and the City of Norfolk, the time to request a recount had not expired
34 before the planned audit. Commissioner Piper stated ELECT reviewed the procedures
35 provided by the localities and believed the procedures required additional work before use.
36 Both Prince William County and the City of Norfolk agreed to plan their post-election
37 audits to review the results of the June primary in July, and would work with ELECT staff
38 to be fully prepared. Commissioner Piper informed the Board that after July 1, ELECT
39 would have a report for the Board on the procedures and results of the audit.

40 The Commissioner introduced James Heo, the Confidential Policy Advisor at
41 ELECT, who started on May 1, 2018. Mr. Heo's primary responsibility would be to work
42 with Information Services to provide communication both internally and externally on their
43 activities, including changes in VERIS, working with policy and other divisions, and
44 communications with the elections community as a whole. Mr. Heo would also take the
45 lead on the post-election audit reviews, and assist in developing procedures for the Board
46 to consider. The Commissioner introduced Tammy Alexander, a former Petersburg
47 Electoral Board ("EB") member, who joined ELECT as the new Campaign Finance
48 Program Analyst. Ms. Alexander began as an electoral board member in 2010, and the
49 Commissioner shared that Ms. Alexander's experience working with candidates on
50 campaign finance would be helpful to ELECT, in addition to the campaign finance work
51 already done by Risé Miller. Vice Chair Wheeler said Ms. Alexander's experience as an
52 EB member would bring a new perspective to the Department.

53 Commissioner Piper addressed recent news articles relating to the issue of mis-
54 assigned and misplaced voters. The Commissioner said that ELECT would prepare a
55 Powerpoint presentation for the next Board meeting to explain the situation and to cover
56 the work ELECT has done so far. Commissioner Piper noted that while many lessons had
57 been learned, much work remains to be done in this area; the Commissioner also said that
58 ELECT was working with localities to address the issue. Chairman Alcorn said that the
59 Washington Post identified a number of mis-assigned voters, and asked if the paper sent
60 ELECT lists of other voters who were similarly mis-assigned. The Chairman recalled that
61 a list was sent to ELECT's previous administration, but that the list may have been lost
62 during the transition of administrations. Commissioner Piper stated that ELECT did its

own review, including a thorough review of all congressional districts as the priority due to the upcoming elections. Because ELECT was conducting an ongoing review, along with localities conducting reviews of their own, the number of possibly mis-assigned voters was constantly changing. Commissioner Piper thanked ELECT staff and localities for the work done.

Chairman Alcorn suggested ELECT contact the Washington Post to see if they have a list of mis-assigned and misidentified voters that could help with the process. Vice Chair Wheeler noted after a meeting with the previous Commissioner of ELECT, Edgardo Cortés, that Mr. Cortés stated ELECT knew of many mis-assigned voters but did not fix the issue. Vice Chair Wheeler stated that ELECT knew of the mis-assigned voters issue for two years, and referenced a bill in the recent legislative session that would have required localities to work with ELECT to be sure their districts were accurate and that voters were properly assigned. Chairman Alcorn mentioned the work that Commissioner Piper said was being done to remedy the situation currently, and acknowledged the enormity of the project. The Vice Chair offered the Board's assistance to ELECT and the localities in the undertaking. Commissioner Piper assured the Board a more in-depth update at the next meeting, and said that ELECT would continue to work with legislators and localities on solutions.

The Commissioner informed the Board that Friday, May 18, was Matthew Davis', last day as ELECT's Chief Information Officer. The Commissioner commended Mr. Davis's work in the eight years he worked for the Department, notably the enormous improvements in the Virginia Election and Registration System ("VERIS"). Secretary McAllister thanked Mr. Davis for the hard work that's been done, and asked that ELECT move quickly to fill the position in his absence. Commissioner Piper assured the Board that ELECT was working closely with the Department of Human Resource Management ("DHRM"), the Governor's office, and the Virginia Information Technology Agency ("VITA"), to find a successor in an expedited manner.

Commissioner Piper then updated the Board on issues that arose in mid-April, when ELECT learned that the City of Hopewell General Registrar (GR) had resigned and that the Hopewell electoral board had not identified a replacement general registrar. ELECT worked closely to ensure that operations continued in the GR's absence; the Department

94 contacted former James City County GR, AJ Cole, asking that he serve as temporary
95 Deputy GR so that operations would continue until the EB appointed a full-time GR.
96 Commissioner Piper also mentioned that the City of Galax used Kaspersky software. The
97 Department of Homeland Security had previously identified Kaspersky software as a
98 threat, so ELECT worked with the locality to remove and replace the software.

99 Chairman Alcorn asked the Commissioner if there were any updates on the Virginia
100 Elections Benchmark Index Workgroup, a workgroup which the Board formed during the
101 April 25, 2018 Board meeting. Commissioner Piper informed the Board that the first
102 meeting of the Workgroup would take place on June 25, 2018, at 5 PM, following annual
103 training. The Commissioner said the members of the Workgroup had been identified, and
104 that ELECT was in the process of hiring a data analyst, who would serve as the additional
105 staff member in the Workgroup. Commissioner Piper stated the group had experience
106 developing strategic plans, and would conduct a full review of elections to create
107 benchmarks for the entire elections community.

108 Vice Chair Wheeler revisited the topic of Hopewell, noting the amount of work that
109 went into remedying the situation. The Vice Chair underscored the serious nature of the
110 problem, and the importance for EBs to appoint GRs well in advance of a transition. Vice
111 Chair Wheeler discussed the lack of background checks in hiring processes, noting
112 particularly that background checks are not required for local elections officials. The Vice
113 Chair noted that these local elections staff have access to VERIS, and therefore have access
114 to the name, date of birth, address, and social security number for all registered Virginians.
115 The Vice Chair suggested ELECT and the Board examine how people are hired for these
116 roles, and create and maintain a list of former GRs that would be willing to work in a
117 locality during an emergency. Chairman Alcorn mentioned that the GREB Handbook used
118 to have a section that gave advice and best practices regarding hiring general registrars.
119 Commissioner Piper noted that section was still in the Handbook, and also mentioned that
120 the Handbook was being updated with a target release date of June 1. The revised
121 Handbook would be improved in terms of usability and information, and was sent to
122 different localities for feedback. The Commissioner also said all liaisons at ELECT were
123 Virginia Registered Election Official (VREO) certified, and receive additional training to
124 assist and train new GRs. Commissioner Piper discussed the idea of a web-access training

125 in the web learning management system that newly appointed GR and EB members could
126 access and complete. The Benchmark Index Workgroup would focus on what training
127 would be needed throughout the year so all the crucial training could extend beyond annual
128 training. Vice Chair Wheeler noted the same issue happened in a previous year. The Vice
129 Chair encouraged the idea of additional training, and offered Board support in the efforts.

130 The next order of business was to review memos regarding Stand By Your Ad
131 (“SBYA”) complaints, presented by Arielle A. Schneider, Policy Analyst with ELECT.
132 Ms. Schneider reviewed the first memo, regarding express advocacy. This memo proposed
133 that the Board move to adopt a policy re-defining express advocacy. The proposed
134 definition mirrors the definition of express advocacy as defined in Federal Election
135 Commission (“FEC”)’s regulation 11 C.F.R. §100.22, (52 U.S.C. 30101 (17)). Ms.
136 Schneider informed the Board that the FEC’s definition was upheld twice as constitutional
137 and consistent with the First Amendment. Ms. Schneider noted that the suggested motion
138 to adopt the revised definition of express advocacy as stated in the working papers must
139 be amended. The original motion suggested that the Board adopt the definition as a policy
140 by majority vote, but due to a consensus by ELECT and the Board that the definition of
141 express advocacy should be established through regulation rather than policy, the motion
142 should be amended to provide that the definition be submitted through the regulatory
143 process to become a new regulation. Although the Board enjoys an exemption from the
144 Virginia Administrative Process Act for regulations that related to the conduct of elections,
145 according to a 2014 OAG opinion, any regulations concerning §24.2-9.3 through §24.2-
146 9.5 do not relate to the conduct of elections, and therefore are not exempt from the
147 regulatory process.

148 Chairman Alcorn discussed the importance of revising the Board’s definition of
149 express advocacy, noting the number of hearings in previous years using the current
150 definitions that lead to frustration and confusion. The Chairman discussed speaking with
151 the Commissioner about moving forward with redefining express advocacy as an
152 amendment to the Administrative Process Act (APA), so that the Board could remain
153 transparent and deliberate while also providing consistency for future Boards. Secretary
154 McAllister inquired about the process to do this, and the Chairman said there would need
155 to be public comment, a review from OAG and Governor’s office, and a number of other

steps before the Board could change their definition. Ms. Birkenheier said she could give a more thorough explanation to the Board separately if needed. Chairman Alcorn suggested proposals put up for public comment have more background about the issue so the public is fully informed of the situation before commenting. Vice Chair Wheeler also suggested clarifying that the definition was pulled from federal guidelines.

The Chairman *moved that the Board submit this revised definition of express advocacy to the public for comment as required by the Virginia Administrative Process Act.* Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

The next memo Ms. Schneider covered outlined a proposed policy for the conduct of SBYA hearings. The proposed policy covered how the Board would conduct SBYA hearings. . Chairman Alcorn voiced support of the memo. Vice Chair Wheeler asked if the memo had any information on timing and deadlines, noting the issues that arose with the previous administration on timeliness. Ms. Schneider directed the Board to the memo approved by the Board on standard operating procedures for SBYA on March 23, 2018. In the March 23 memo, it was outlined that all complaints are to be forwarded to the Board within one week of receipt as well as requirements regarding scheduling the hearing. Chairman Alcorn asked Ms. Schneider where she drew the line between operating procedure and policy, and Ms. Schneider replied that operating procedures were written for ELECT staff to follow, whereas the conduct of hearings governed conduct of the Board.

Vice Chair Wheeler suggested that language requiring ELECT staff to provide SBYA complaints to the Board within one week of receipt be added to the proposed SBYA Hearings policy currently being considered. Commissioner Piper noted that adding the ELECT staff requirement to the SBYA Hearings policy may be repetitive but expressed willingness to add it to the policy if the Board wanted it there. Chairman Alcorn requested an offline discussion on the structure of the documents so the Board could focus on the SBYA hearings scheduled for the day. The Chairman asked if holding off approving the memo would affect the hearings, and Ms. Schneider replied it would not. Chairman Alcorn suggested waiting on approval until the changes could be made.

The next order of business was the SBYA hearings. Commissioner Piper directed the Board to the letter in the working papers from the Democratic Party of Virginia (DPVA)

187 and Republican Party of Virginia (RPVA), requesting their complaints against Ed Gillespie
188 and Ralph Northam, respectively, be withdrawn, and asked the Board how to proceed with
189 withdrawals prior to proceeding with the hearings. Chairman Alcorn stated that a request
190 for withdrawal should not factor into the Board's discussion of potential violations. The
191 Chairman added that whether or not the complainant wished to pursue the complaint, a
192 violation could still have happened. Chairman Alcorn stated that campaign finance and
193 Stand by Your Ad laws exist to protect the voter, rather than to protect the candidates. Vice
194 Chair Wheeler added that there could be value in discussing the allegations and making
195 decisions that could act as guidance for others regarding the issue brought up by the
196 complaint. Secretary McAllister agreed, noting it would be in the public interest to hear
197 the complaints regardless of the complainants' requests to withdraw, in order to be
198 transparent about rules, regulations, and policies and to help form a path in decision making
199 for violations in the future. Chairman Alcorn asked Ms. Birkenheier if the law prevented
200 the Board from hearing a complaint if the complainant withdrew, and Ms. Birkenheier said
201 there was not. The Chairman suggested adding their decision to consider the complaints
202 without regard to the withdrawal request, to the operating procedures and proposed policy.
203 Commission Piper agreed.

204 Chairman Alcorn recommended that complaints against individuals in attendance
205 at the Board meeting be heard first, and Ms. Schneider noted that that practice would
206 conflict with the provisions that were proposed in the previously discussed memo on
207 proposed policies, and on docket for later approval pending changes. The proposed
208 policies stated hearings would be heard in alphabetical order.

209 The first complaint to be heard was against Bart Randall for School Board. Ms.
210 Schneider reviewed the complaint, noting photographs provided as evidence as well as a
211 letter Mr. Randall sent to ELECT on Sunday, May 20. Ms. Schneider read the letter for
212 the Board; in the letter, Mr. Randall explained that he enlisted the help of a political
213 consultant that did not make him aware of the disclosure requirements. Mr. Randall noted
214 that in late November, he was made aware of the requirements and attempted to add the
215 disclosure to his signs but was unable to find each one; Mr. Randall said he was added the
216 disclosure to three signs located at polling places on Election Day. Chairman Alcorn asked
217 the Board if there was a violation, noting he did not see any attempt of disclosure in the

218 provided photographic evidence. The Chairman noted Ms. Schneider suggested a fine of
219 \$400, and asked how staff counted the number of violations. Ms. Schneider explained the
220 number of violations came from the number of signs reported in the complaint, which
221 included the three polling place signs and one sign in front of the complainant's house.

222 Chairman Alcorn asked if that fining structure was different from previous Board
223 procedures. Vice Chair Wheeler recalled that the Board decided that in the case of a
224 newspaper ad, mailers, and flyers, an ad was only considered as one violation, regardless
225 of the number of times it was printed. The Vice Chair noted, however, that with yard signs,
226 the candidate would be aware of how many were ordered; therefore, the violations should
227 count per sign. Secretary McAllister recalled similar proceedings. Vice Chair Wheeler
228 said in this case someone notified Mr. Randall of the mistake, and that Mr. Randall tried to
229 rectify it. Chairman Alcorn asked Commissioner Piper how occurrences were counted in
230 the past. The Commissioner stated the only time "per occurrence" was mentioned in the
231 Code was regarding television and radio advertisements, and that there was no solid rule
232 regarding print media. The Commissioner left it up to the Board's discretion how
233 occurrences should count.

234 Ms. Birkenheier asked how many signs were provided in the evidence, noting that
235 all pictures could be of the same sign. Ms. Schneider said that in Mr. Randall's letter three
236 undisclosed signs were mentioned at the polling places, and that the complainant
237 mentioned the sign in their own yard. Vice Chair Wheeler said normally candidates knew
238 if yard signs were placed at polling places, so asked why the three Mr. Randall mentioned
239 were not changed. Ms. Schneider noted that Mr. Randall said he attempted to provide
240 proper disclosure on Election Day, and said since it was Mr. Randall's first violation, she
241 recommended a \$50 fine for the first violation, doubled to \$100 for the proximity to the
242 election. Therefore, the fine was a first time violation with an apology/explanation from
243 Mr. Randall, doubled due to proximity to the election, with four occurrences, resulting in
244 a \$400 fine. Chairman Alcorn moved *subject to the Board's authority under the Code of*
245 *Virginia §24.2-955.3, to find Bart Randall in violation of §24.2-956 Stand by Your Ad print*
246 *media disclosure requirements with regard to four advertisements, and is hereby assessed*
247 *\$400.* Vice Chair Wheeler seconded the motion, and the motion passed unanimously.

248 The next hearing was against Cheryl Turpin for Delegate. Ms. Schneider
249 recommended the Board find violation because of a failure to properly disclose. Ms.
250 Schneider noted there was a disclaimer, but the disclaimer was not complete because the
251 advertisement referenced another clearly identified candidate, Rocky Holcomb. §24.2-
252 956.2 provides that “in an advertisement sponsored by a candidate or candidate campaign
253 committee that makes reference to any other clearly identified candidate who is not
254 sponsoring the advertisement, the sponsor shall state whether it is authorized by the
255 candidate not sponsoring the advertisement. The visual legend in the advertisement shall
256 state either “Authorized by [Name of candidate], candidate for [Name of office]” or “Not
257 authorized by any other candidate.”” Chairman Alcorn asked for clarification, noting that
258 Delegate Turpin’s ad did say “paid for and authorized by Cheryl Turpin for VB.” Ms.
259 Schneider clarified, stating that proper disclosure would have included Delegate Turpin’s
260 name, rather than the name of her campaign committee. Further, Ms. Schneider noted that
261 advertisements that reference another candidate must also include a second disclosure
262 statement, stating whether the ad was “authorized by any other candidate.” Ms. Schneider
263 recommended counting the violation as one occurrence, as only one yard sign was provided
264 as evidence. Because of the proximity to the election, ELECT recommended the fine was
265 doubled; Delegate Turpin also provided a letter, but gave no apology or explanation and
266 did not describe attempts at remediation.

267 Trevor Southerland, Executive Director for the Virginia House Democrats, spoke
268 on behalf of Delegate Turpin, noting that the evidence provided in the complaint was the
269 front and back of a flyer, rather than a yard sign. Mr. Southerland directed the Board to
270 Delegate Turpin’s written response, noting the complaint did not have a code section
271 included in it. Chairman Alcorn mentioned the related memos and description about
272 substantial compliance and asked how that would or would not apply to the complaint. Ms.
273 Schneider mentioned a memo the Board passed in 2015, and noted an ad would be
274 substantially compliant if the disclosure unambiguously conveyed all required
275 information. Chairman Alcorn clarified that the disclosure required the candidate and the
276 office they’re running for to be part of the disclaimer. Ms. Schneider agreed., and added
277 that the disclosure must also state "Not authorized by any other candidate." Chairman
278 Alcorn moved *subject to the Board’s authority under the Code of Virginia §24.2-955.3, to*

279 *find Cheryl Turpin in violation of §24.2-956 Stand By Your Ad print media disclosure*
280 *requirements with regard to two advertisements, and is hereby assessed \$200.* Vice Chair
281 Wheeler seconded the motion. Chairman Alcorn stated that the ad in question fell under
282 print media, and that the fine was \$200— \$100 for the violation without apologies or
283 remediation, which was then doubled for being within fourteen days prior to the election.
284 The motion passed unanimously.

285 The next hearing was against Elizabeth Guzman for Delegate. Ms. Schneider
286 presented the Board with a mailer sent by Delegate Guzman. The mailer did not include
287 the required disclaimer, but Ms. Schneider noted that the violation was a first time offense
288 early in the campaign, and subsequent literature was properly disclosed. Ms. Schneider
289 also said that the violation did not occur within 14 days before an election, and therefore a
290 fine of \$50 would be appropriate for a first time offense with an apology; however, Ms.
291 Schneider also observed that the written statement sent by Delegate Guzman to the Board
292 did not include an apology, giving the Board discretion to fine \$100 as per the penalty
293 schedule provided in the campaign finance summaries. Chairman Alcorn stated he did not
294 see an apology or explanation in Delegate Guzman's letter, and Vice Chair Wheeler agreed.
295 Chairman Alcorn moved *subject to the Board's authority under the Code of Virginia §24.2-*
296 *955.3, to find Elizabeth Guzman in violation of §24.2-956 Stand By Your Ad print media*
297 *disclosure requirements with regard to an advertisement, and is hereby assessed \$100.*
298 Vice Chair Wheeler seconded the motion.

299 An unidentified attendee asked the Board what constituted as an apology.
300 Chairman Alcorn explained that the Board asks candidates to take ownership of their
301 actions, admit lessons learned, or something of that matter; it also could include remedial
302 actions that were taken. The motion then passed unanimously.

303 The next hearing was against Friends of Team Manassas. Ms. Schneider said the
304 Board would find a transcript from the June 27, 2017 Board meeting, provided by Stephen
305 Hersch, the complainant, in their materials. The first mailer Mr. Hersch provided was
306 distributed on an unknown date in 2016, and had no visible disclaimer. Because this mailer
307 constituted as a first violation and was not alleged to be distributed during the 14 days prior
308 to the election, Ms. Schneider recommended a \$100 fine. Chairman Alcorn noted an
309 attempt at disclosure, and Ms. Schneider explained that under print media ad disclosure

requirements, an ad referencing a clearly identified individual must disclose whether or not candidates authorized it. Therefore, even though no candidates authorized the ad in this case, the ad must state as much. Ms. Schneider said there were two different occurrences of this ad, with one of the occurrences happening within 14 days of the election. Ms. Schneider recommended the second occurrence, which would constitute a second violation, be fined \$200 due to its distribution time.

The third complaint was of the same mailer's distribution online. Ms. Schneider said websites fall under print media disclosure requirements, and that one side of the mailer was posted online within 14 days prior to the election date. Ms. Schneider recommended a fine of \$200, as the appropriate fine, as the usual \$100 fine assessed for a second-time violation should be doubled due to its proximity to the election. The fourth complaint pertained to a second mailer, which Mr. Hersh alleged was delivered a week before Halloween in 2017, which was within 14 days of the election. Ms. Schneider recommended a fine of \$200, with the \$100 fine doubled due to its proximity to the election. Vice Chair Wheeler asked for clarification that these fines were appropriate because the challenged advertisements were sponsored by candidates and mentioned clearly identified candidates. Ms. Schneider clarified that Friends of Team Manassas is a non-candidate committee, and that a non-candidate committee must disclose whether an ad is authorized by any candidate if the advertisement clearly references any candidate.

Secretary McAllister asked for clarification on who would be fined in this case, as traditionally the person facing allegations was the candidate. Ms. Schneider explained the political committee, Friends of Team Manassas, would be fined, as a committee governed by §24.2-956.1. Ms. Schneider said it would be difficult to say there was coordination between the committee and a particular candidate, notably as neither ELECT nor the Board have investigatory authority.

The fifth violation was regarding a video on YouTube, which qualified as a print media disclosure requirements because the video was posted on a website. The video was posted on October 14, 2016, which was not within 14 days of the election; although the video remained posted throughout the election, Ms. Schneider recommended a \$100 fine for this video for a second offense, which should not be doubled due to the proximity to the election. The sixth violation was regarding a second video, which was posted on

Facebook on October 31, 2016. This violation was considered a second occurrence, and Ms. Schneider recommended a \$200 violation fine—the \$100 violation penalty, doubled due to the proximity to the election. Before moving forward, Ms. Schneider said the Board may want to reconsider the aggravated penalties that occur in multiple violations as outlined in campaign finance summaries, in case the Board wanted to assess a higher fine for the multiple occurrences. Chairman Alcorn suggested waiting to consider aggravated penalties until all the violations were heard.

The seventh violation was the same video as the sixth violation, but posted to the Team Manassas website on October 31, 2016, which was within the 14 day period prior to the election. Ms. Schneider said she had not seen the Board assess more than a 2nd time violation, so it remained unclear if a second violation constituted a second election in which the violations took place or if it would be defined in another way. Commissioner Piper said a second time violation was if the Board assessed a penalty against a candidate or committee and the candidate or committee then reoffended; in the case of Friends of Team Manassas, however, each item was a first time violation.

Chairman Alcorn asked if there was a SBYA violation conversation in 2017 when the Board first discussed Friends of Team Manassas, or if the conversation only concerned the filing their Statement of Organization. Ms. Schneider informed the Board that the Board had already heard each of these complaints, but held the determination and assessment pending assurance that the information provided was provided to both the complainant and respondent. Chairman Alcorn stated that meant that this is the first time the Board would be giving them feedback, making it reasonable to treat these offenses as first time violations. The Chairman moved *subject to the Board's authority under the Code of Virginia §24.2-955.3, to find Friends of Team Manassas in violation of §24.2-956 Stand By Your Ad print media disclosure requirements with regard to an advertisement and is hereby assessed \$1,200*. Secretary McAllister seconded the motion.

Stephen Hersch, complainant, then informed the Board that the video on YouTube was still running as of the date of the meeting. Mr. Hersch noted that Friends of Team Manassas received notice of violation in 2017 when the Board first heard the case, and then again in advance of this meeting, and yet the video remained posted. Mr. Hersch also directed the Board to two other videos he provided as evidence in the working papers. Ms.

Schneider asked to amend the Chairman's motion to include that the Board found 7 advertisements in violation.

Vice Chair Wheeler expressed concern at the idea of Friends of Team Manassas facing such a fine as a group of organized citizens, as opposed to a committee, and discussed the importance of educating people on more the nuanced rules of campaign finance such as those discussed in this case. Commissioner Piper said ELECT hired Ms. Alexander as a Campaign Finance Program Specialist to travel and train candidates, committees, and campaign committees on campaign finance laws and rules, including Stand By Your Ad. Vice Chair Wheeler stated that she did not know anyone involved in this case, but wanted to ask the Board to consider a lower fine considering the Board was hearing the violations so far from the dates of offense. Mr. Hersch informed the Board that Friends of Team Manassas was created and financed by candidates, not by a group of organized citizens. Mr. Hersch alleged that the treasurer of Friends of Team Manassas was one of the candidates the group supported, and none of the disclosure of who funded the group became apparent until after the election. Mr. Hersch further stated that these candidates started a number of committees, including Friends of Team Manassas and Awareness Manassas (a group the Board heard complaints against in 2017), with the intent to obfuscate information from the public. The motion presented earlier by the Chairman passed unanimously.

The next complaint heard was against Hannah for Hope. Ms. Schneider directed the Board to materials provided by Ms. Rishq to ELECT on May 18, 2018. In the materials, Ms. Rishq made clear that the materials in violation were never intended to be distributed and provided evidence that Ms. Rishq's team gave clear instructions to the printer to include the disclosure, as well as their immediate response upon receiving materials without the disclaimer. Ms. Schneider recommended, given this information, that the fine be no more than \$50. Chairman Alcorn clarified that the original recommendation given by ELECT was for \$100 for a first time offense, but because Ms. Rishq provided an explanation and apology, that Ms. Schneider was amending her recommendation to \$50. Ms. Schneider agreed with the clarification, but explained because that the distribution of the undisclosed materials took place on Election Day, the \$50 fine \$50 for a first violation, should be doubled due to its proximity to the election,

but that she recommended a reduced fine of \$50 due to the context Ms. Risheq provided. Chairman Alcorn asked why \$50 was the amount originally fined, stating the original fine for a first time violation should have been \$100, doubled to \$200. The Chairman then asked if the materials were distributed or not.

Ms. Risheq, present at the meeting, stated that the materials were not authorized for distribution. The undisclosed materials were set aside by the campaign on Election Day, but Ms. Risheq suspected, due to the amount of volunteers going through the campaign office that day, they were accidentally picked up and distributed. Ms. Risheq made clear that whoever distributed them was not authorized to, and that staff did not hand out the undisclosed materials. Vice Chair Wheeler clarified that the materials were in the campaign headquarters, and Ms. Risheq said yes, and recognized the staff should not have kept the ones to be discarded in the office. Ms. Risheq discussed the evidence she provided on May 18, which included a detailed account of communications with the printer; a formal letter sent to the printer that stated that the campaign would not pay for any literature that was printed without the disclosure; an email from Ms. Risheq's manager to the printer; an email with the approved and disclosed literature; other items the campaign used with the proper disclosure; and bank statements proving that Ms. Risheq did not pay for the unused, undisclosed items.

Chairman Alcorn asked that because the campaign did not pay for the undisclosed items that were distributed if the items then met the definition of an expenditure and were therefore subject to SBYA. Ms. Schneider noted there was the contract between Ms. Risheq and the printer, but that both sides breached contract. Ms. Schneider said it could be argued that the materials constituted a contribution of value. Vice Chair Wheeler noted a previous discussion by the Board that if campaigns were not going to use literature, that that literature be sealed up and marked as "do not use." Chairman Alcorn agreed, stating that the fact the campaign did not pay for it does not matter. The Chairman found a violation of print media disclosure requirements, and asked if the materials and letter from Ms. Risheq constituted an explanation. Chairman Alcorn suggested a fine of \$50, considering the materials Ms. Risheq provided. Vice Chair Wheeler stated a lesson learned in getting rid of materials that should not be distributed, and Ms. Risheq explained that she had a staff of two people that did not have time to handle it before Election Day. Chairman

434 Alcorn moved *subject to the Board's authority under the Code of Virginia §24.2-955.3, to*
435 *find Hannah Risheq in violation of §24.2-956 Stand By Your Ad print media disclosure*
436 *requirements with regard to an advertisement and is hereby assessed \$50.* Vice Chair
437 Wheeler seconded the motion. Chairman Alcorn voted yea, Vice Chair Wheeler voted yea,
438 and Secretary McAllister did not vote, as she was absent from the room, and the motion
439 carried 2 to 0.

440 Chairman Alcorn moved *the Board recess to reconvene at 1:00 PM.* Vice Chair
441 Wheeler seconded the motion. The Board recessed at 12:45 PM and reconvened at 1:08
442 PM.

443 The next complaint heard was against the National Right to Work Committee. Ms.
444 Schneider provided the Board with pages 1 and 3 of a 4-page letter, and stated based off
445 these parts of the letter that ELECT received, there was no violation of Stand By Your Ad.
446 Ms. Birkenheier asked if ELECT received pages 2 and 4, and Ms. Schneider confirmed
447 they did not. Chairman Alcorn moved *subject to the Board's authority under the Code of*
448 *Virginia §24.2-955.3, to find the National Right to Work committee not in violation of*
449 *Virginia's campaign finance Stand By Your Ad laws.* Vice Chair Wheeler seconded the
450 motion, and the motion passed unanimously.

451 The next complaints heard were against Ned Gallaway. Ms. Schneider said there
452 were two complaints against the Gallaway campaign; one was from an individual who
453 reported 8 signs, along with photographic evidence, and the other was from Mr. Gallaway,
454 who self-reported a total of 48 signs without disclosure. Mr. Gallaway's complaint
455 explained the steps taken to try and fix the situation with the signs that could be found. Ms.
456 Schneider said that a recommended fine was not provided because the evidence was of
457 yard signs, and with the number of reported signs and with the violation happening within
458 14 days of the election, the maximum penalty could not exceed \$2,500. Secretary
459 McAllister asked what Ms. Schneider's recommendation would be, and Ms. Schneider
460 suggested fining Mr. Gallaway for the signs provided with photographic evidence, but not
461 for those that Mr. Gallaway self-reported, so as not to discourage candidates from self-
462 reporting. Ms. Schneider recommended an \$800 penalty, with a \$50 fine for the first time
463 violation with remediation attempts, doubled due to the proximity to the election, for each
464 of the 8 signs reported by the other complainant. Chairman Alcorn moved *subject to the*

Board's authority under the Code of Virginia §24.2-955.3, to find Ned Gallaway in violation of §24.2-956 Stand By Your Ad print media disclosure requirements with regard to 8 advertisements, and is hereby assessed \$800. Secretary McAllister seconded the motion.

Ned Gallaway, respondent, spoke and clarified that his campaign ordered 50 signs in total. Mr. Gallaway was running unopposed; however, upon hearing that a write-in candidate was mounting a campaign, Mr. Gallaway ordered signs to have a name presence at the polls and the signs were displayed on Election Day only. Upon realizing the lack of disclaimer, Mr. Gallaway stated the campaign wrote the disclosure statement upon labels and added them on the undisclosed signs they could find. Mr. Gallaway agreed with the Vice Chair's point about improving education for candidates, and said any policies that could outline what were best practices for candidates would be helpful. When Mr. Gallaway realized the violation, he submitted a formal complaint against himself stating the violation and actions taken to remedy the situation. Vice Chair Wheeler noted Mr. Gallaway attempted to fix the signs, and that the signs were only displayed on Election Day. Ms. Schneider apologized for not including Mr. Gallaway's self-reported complaint in the working papers; the complaint included the remediation actions, which constitutes an apology by Board standards. Vice Chair Wheeler asked if the Board would consider reducing the fine. Chairman Alcorn agreed there should be some credit given for self-reporting, and asked Ms. Birkenheier, as counsel to the Board, for advice. Secretary McAllister asked if the Board had any discretion in the matter.

Commissioner Piper noted the Board had full discretion, with the knowledge that the Board tends to act on precedent so the decision made during today's meeting would be binding on or persuasive for the Board when deciding subsequent cases with similar issues or facts. The Commissioner stated in his time working with the Department in campaign finance matters that he could not recall another candidate self-reporting, and commended Mr. Gallaway for doing so. Ms. Schneider informed the Board that there was another instance of self-reporting, to be heard later in the meeting. Vice Chair Wheeler acknowledged that Mr. Gallaway self-reported, but noted that ELECT received another complaint about a possible violation by Mr. Gallaway on Election Day. Secretary McAllister acknowledged the Commissioner's comments regarding setting precedents for

subsequent rulings and suggested lowering the fine to \$400, given that Mr. Gallaway self-reported and attempted remediation. Both the Vice Chair and Chairman agreed. The Secretary suggested an amendment to the Chairman's motion to substitute the penalty of \$800 to \$400, and Vice Chair Wheeler seconded the amendment. The motion passed unanimously.

The next complaints heard were against Pulaski Citizens for an Informed Community. Ms. Schneider began by outlining the undisclosed yard signs, as well as the newspaper ads; ELECT also received additional information regarding advertisements, with additional photographs submitted as evidence. Chairman Alcorn reviewed the recommendations, asking if ELECT was recommending a \$600 penalty. Ms. Schneider confirmed they were, but noted the Board could exercise discretion in regards to the number of signs allegedly in violation. Ms. Schneider counted four non-compliant signs. Chairman Alcorn asked if Pulaski Citizens were a registered local committee, as the advertisements appeared to be in regards to a referendum. Chairman Alcorn asked if referendums and referendum committees were within the scope of SBYA. Ms. Schneider noted that §24.2-955 discussed the scope of disclosure requirements, including an individual who incurs expenses only with respect to a referendum; however, it was unclear who Pulaski Citizens for an Informed Community was funded by. Ms. Birkenheier asked Ms. Schneider if all the signs and advertisements were paid for by the respondent, and Ms. Schneider was unsure given the evidence provided to ELECT. Chairman Alcorn asked if ads related to referendums were exempt from SBYA. Commissioner Piper noted that referendum committees are not subject to SBYA, but individuals are. As Pulaski Citizens was not a registered political committee, the Commissioner was unsure if the ads met disclosure requirements. The Commissioner also directed the Board to the newspaper ad with a sample ballot, and asked if that would have to be referred to the Commonwealth's Attorney. Ms. Schneider agreed, given the sample ballot and the uncertainty regarding the responsibility behind the signs.

A representative from Pulaski Citizens for Education spoke and informed the Board that her committee provided ELECT with the cost for full page ads like the ones that Pulaski Citizens for an Informed Community placed. The representative stated that with the number of ads, and with the cost of placing the ads, the cost of the ads overall would

527 exceed a value of \$1,000, which meets the criteria for being required to form a committee.
528 Pulaski Citizens for Education did report as much to the Commonwealth's Attorney, and
529 was unsure who else to direct the complaint to, considering Pulaski Citizens for an
530 Informed Community failed to form a referendum committee. Ms. Birkenheier asked the
531 representative when the violations occurred and when the complaint was filed with
532 ELECT. The representative stated the violations and complaint were submitted in
533 September of 2017. Ms. Birkenheier asked the Board if it would like the pass by the
534 complaint for the day until more information was available. Chairman Alcorn suggested
535 the Board have a discussion on the scope of referendum committees, but agreed with
536 passing the subject by for the day.

537 The representative further informed the Board that the central issue of their report
538 was that there was a coordinated effort to shield Pulaski Citizens for an Informed
539 Community from the requirements of public disclosure by acting as a referendum
540 committee without registering as such; therefore, the public would assume that the
541 advertisements were paid for and authorized by a committee, when in fact, no such
542 committee existed. The representative asked what passing the topic by for the day entailed.
543 Chairman Alcorn explained that the Board would not rule on the matter during the meeting,
544 and would make a decision in a future meeting.

545 The next complaint heard was against Schleeper for City Council. Ms. Schneider
546 covered the number of ads in question, as well the proximity of the ads to the election. Mr.
547 Schleeper, respondent, stated it was his first time running. Upon realizing the lack of
548 disclaimer, Mr. Schleeper attempted to add a handwritten disclaimer to each sign. When
549 the campaign received new signs with the proper disclosure, the old, undisclosed signs
550 were disposed of. Chairman Alcorn clarified the recommended fine was a \$50 fine for a
551 first time violation with attempts of remediation and an explanation, doubled due to
552 proximity to the election, and then applied to each sign submitted as evidence, which
553 resulted in a \$400 fine. Vice Chair Wheeler asked how many of the signs were remediated
554 and if the fixes happened before Election Day. Mr. Scheleeper said that new signs were
555 ordered on March 16, with a two-week delivery date, putting the arrival of the new,
556 properly disclosed signs at April 1st; meaning the new signs replaced the undisclosed signs
557 before Election Day. Vice Chair Wheeler noted that the proximity to the election did not

558 apply because Mr. Schleeper hand wrote the disclosures before the election. Ms.
559 Schneider said the complaint alleged that there were four signs, but made no mention of
560 whether or not there was an attempt to provide disclosure. Chairman Alcorn asked if there
561 were any other photographs submitted as evidence, and Ms. Schneider said there were not.

562 Vice Chair Wheeler stated because the Board agreed to lower Mr. Gallaway's sign,
563 that they should consider reducing Mr. Schleeper's fine as he attempted to fix the
564 disclosure. Chairman Alcorn clarified that Mr. Gallaway's fine was lowered because Mr.
565 Gallaway self-reported, but noted that other candidates who remediated their signs received
566 a \$50 assessment. Chairman Alcorn stated earlier in the meeting the Board fined based on
567 the number of signs reported. As there was only evidence of one sign per the evidence
568 submitted, rather than the four reported, Commissioner Piper asked if that information
569 would be taken into consideration. Ms. Schneider agreed, noting that the Board did not
570 previously require a photograph of each sign in violation for which a penalty assessed. Ms.
571 Schneider reminded the Board that in Mr. Gallaway's situation, there were 8 signs reported
572 before Mr. Gallaway self-reported 48. Mr. Gallaway was then fined for the 8 signs
573 reported, and the resulting fine was \$400. Vice Chair Wheeler asked Mr. Schleeper for
574 clarification on when the signs were corrected by a handwritten disclosure. Mr. Schleeper
575 said the hand written disclosures were added to the signs before the signs were even
576 disseminated; therefore, the sign in the photographic evidence likely had the handwritten
577 disclaimer on the back of it. Chairman Alcorn stated if there was in fact a disclaimer on
578 the back side of the sign, then there was no violation. Chairman Alcorn moved *subject to*
579 *the Board's authority under the Code of Virginia §24.2-955.3, to find Schleeper for City*
580 *Council not in violation of Stand By Your Ad print media disclosure requirements.* Vice
581 Chair Wheeler seconded the motion, and the motion passed unanimously.

582 The next complaint heard was against Tim McPeters for Commissioner of the
583 Revenue. Ms. Schneider stated that all of Mr. McPeters's signs were properly disclosed
584 before they were placed, and that no violation of SBYA was to be found. Chairman Alcorn
585 asked why this was submitted as a SBYA complaint, and Mr. McPeters said there was
586 confusion over the size the disclaimer is required to be. Commissioner Piper said that
587 advertisements were required to have their disclaimers placed in a conspicuous manner,
588 and Chairman Alcorn noted that the size requirement was 7 pt. Mr. McPeters stated he had

589 the evidence to indicate that the font on the signs was bigger than that. Ms. Schneider
590 noted that the 7 pt font applies only to electronic advertisements, as stated in §24.2-956.
591 Mr. McPeters pulled out one of the signs in question, and showed the Board that the
592 disclaimer was placed on both sides. Chairman Alcorn moved *subject to the Board's*
593 *authority under the Code of Virginia §24.2-955.3, to find Tim McPeters not in violation of*
594 *Stand By Your Ad print media disclosure requirements.* Vice Chair Wheeler seconded the
595 motion, and the motion passed unanimously.

596 Ms. Schneider then gave the Board background on television advertisement
597 disclosure requirements, stating that any television ad that a campaign committee puts out
598 must have a written disclosure that appears on the screen. The disclosure must have the
599 name of the committee or candidate that paid for it. If the ad references another clearly
600 identified candidate, there must be a spoken disclaimer, spoken in the voice of the
601 candidate. The spoken disclaimer must be accompanied by a full screen, unobscured image
602 of the candidate. Unobscured, as defined in §24.2-955, means “that the only printed
603 material that may appear on the television screen is a visual disclosure statement required
604 by law, and that nothing is blocking the view of the disclosing person’s face.” Ms.
605 Schneider mentioned that the requirement in §24.2-957.1 that there be a disclaimer at the
606 beginning and end of the ad was not applicable because none of the ads being discussed
607 during the meeting were longer than 30 seconds.

608 The first television ad complaint heard was against a TV advertisement sponsored
609 by the Northam for Governor campaign. Ms. Schneider played the ad for the Board, and
610 said that the complaint alleged that there was an insufficient, full screen image of Governor
611 Northam. Ms. Schneider disagreed with the complaint, noting that the image was not
612 obscured as it was the only photograph on screen, contained the disclosing individual,
613 occupied all space, and contained at least 50% of the vertical height of the screen. Ms.
614 Schneider further noted that no other printed material other than the written disclosure
615 appeared with the image, and that the advertisement met the requirements for oral and
616 written disclosures.

617 Ms. Schneider noted that with television ads, the written disclosure was required to
618 constitute 20 scan lines in size, but that the size of the written disclosure was not in question
619 and it was unclear how to measure scan lines. Brad Komar, Governor Northam’s

620 Campaign Manager, spoke and noted the letter submitted by the DPVA and RPVA. Mr.
621 Komar stated both complaints, against Governor Northam and Ed Gillespie, were filed in
622 late September. The letter sent to ELECT came from counsel from both the Democratic
623 and Republican parties, and stated the ads substantially complied with §24.2, and that the
624 Board should find both Gillespie and Northam to not be in violation. In regards to the
625 Northam ad, Mr. Komar noted that there was a clear, unobstructed image of Governor
626 Northam. Chairman Alcorn moved *subject to the Board's authority under the Code of*
627 *Virginia §24.2-955.3 to find Northam for Governor not in violation of Stand By Your Ad*
628 *television disclosure*. Vice Chair Wheeler seconded the motion, and the motion passed
629 unanimously.

630 The next complaint heard was against three television advertisements sponsored by
631 the Ed Gillespie for Governor campaign. Ms. Schneider played the first ad for the Board,
632 noting that because the ad did not mention another candidate, the oral disclosure statement
633 was not required. Ms. Schneider explained that the statement has to be accompanied by an
634 unobscured, full screen photo of the candidate; the advertisement could be considered
635 obscured because there were lines of text that preceded the disclosure statement, and the
636 Code states that the only text on screen could be the disclosure statement. Chairman Alcorn
637 asked if that definition was from ELECT or in the Code, and Ms. Schneider directed the
638 Board to §24.2-955.1. Ms. Birkenheier drew the Board's attention to §24.2-957.1,
639 subsection 1, where the Code stated the requirements for a legend of a disclosure statement;
640 Ms. Birkenheier noted that subsection did not mention the term "unobscured."
641 Chairman Alcorn clarified that there would only be the unobscured requirement if another
642 candidate was mentioned in the advertisement, as required by §24.2-957.1, subsection 3.
643 Ms. Birkenheier agreed, but deferred to staff on if that interpretation was consistent with
644 past Board actions. Ms. Schneider noted it was unclear if subsection 3 applied to the
645 subsections about the legend as well as to advertisements that clearly identify another
646 candidate; Ms. Schneider also said the Board did not have past rulings on television ads.

647 Ms. Schneider said, consistent with Ms. Birkenheier's notes, the next two
648 advertisements from Gillespie for Governor clearly identify a candidate and therefore
649 explicitly require an unobscured photograph of Mr. Gillespie to appear during the
650 disclosure statement and would also require a disclosure statement spoken by the

sponsoring candidate. Vice Chair Wheeler asked if the reason the first advertisement was being questioned was because there was other print on the screen, noting that the disclosure text was unobstructed. Ms. Schneider referred back to the definition in the Code discussed, stating the unobscured statement only referred to advertisements that clearly identified another candidate. Commissioner Piper asked Ms. Birkenheier if the unobscured requirement only applied to the candidate's picture, not to the text of the disclosure statement on the screen. Chairman Alcorn pointed out that §24.2-957.1 read "the disclosure statement" in all of the subsections, except for subsection 5, which read "the oral disclosure statement." The Chairman interpreted the Code as meaning that the unobscured photograph only applied to the oral disclosure statement, rather than the text of a disclosure statement. Because the first advertisement did not have an oral disclosure statement as it did not mention another candidate, the Chairman found no violation in the first advertisement.

Ms. Schneider played the second advertisement for the Board. Chairman Alcorn noted the advertisement did identify another candidate: Governor Northam. The Chairman noted that §24.2-955.1 defined unobstructed as having no other text than the written disclosure statement on screen during the oral disclosure statement. Because Mr. Gillespie's ad included additional text, the Chairman found this advertisement to be in violation of §24.2-957.1. Ms. Birkenheier clarified that the Code allowed the text of visual disclosure statements required by law, but agreed that there was additional text on screen. Ms. Schneider pointed to the third subsection of §24.2-957.1, which states that a candidate may provide the oral disclosure statement required by the section at the same time as the visual disclosure. Vice Chair Wheeler clarified that according to Ms. Schneider's statement, the second advertisement was not in violation. Ms. Schneider corrected the Vice Chair, stating the additional text on the screen, present in addition to the written disclosure, would constitute a violation. Vice Chair Wheeler asked that because there was additional text on the screen, despite the photo of the candidate being otherwise unobstructed and having the disclosure spoken in the candidate's voice, that there was a violation. Ms. Schneider said yes, because of the nuanced definition in the Code. Vice Chair Wheeler stated that it was clear who sponsored the ad, and that the probable intent of the law was so the candidate's face and the written disclaimer were not obstructed. Chairman Alcorn

682 agreed that the definitions were nuanced, but agreed with staff assessment that the
683 advertisement was in violation of §24.2-957.

684 Vice Chair Wheeler asked if it mattered that both parties asked to have their
685 complaints withdrawn. Chairman Alcorn reminded the Vice Chair of the earlier
686 conversation, stating that even if the complainant withdrew, a violation still may have
687 happened so it was the Board's duty to review and assess fines regardless. The Vice Chair
688 argued that in addition to requests for withdrawal, the additional text on the screen did not
689 obscure the face of the candidate. Chairman Alcorn agreed, but noted the requirement
690 stated that no text could be on the screen other than the written disclaimer, which was not
691 the case with the particular advertisement. Secretary McAllister also agreed with staff's
692 recommendation to find a violation of §24.2-957. The Secretary stated because this was
693 the first television advertisements the Board would make a ruling on, the Board should
694 adhere closely to the rules as their assessments would establish precedent for future
695 hearings. Vice Chair Wheeler reiterated that the text did not obscure the candidate's face,
696 and said the letter sent by both parties should be counted in the Board's consideration. Ms.
697 Schneider said the letter indicated the advertisements substantially complied, though the
698 Board had indicated otherwise during the discussion, and did not include an explanation,
699 attempt of remediation, or apology. Vice Chair Wheeler asked if both parties' legal counsel
700 were signatories on the letter, and Ms. Schneider said yes.

701 Ms. Schneider showed the Board the third advertisement. Chairman Alcorn noted
702 the advertisement clearly mentioned another candidate, and therefore required oral
703 disclosure. This advertisement also included extraneous text on the screen during the oral
704 disclosure, rendering the advertisement improperly disclosed in violation of §24.2-957.1;
705 similar to the second advertisement. Chairman Alcorn asked what the typical penalty for
706 a television advertisement was. Ms. Schneider said there have been no previous Board
707 decisions on television advertisements, but that there are recommendations in the campaign
708 finance summaries; Ms. Schneider noted that the maximum penalty was not to exceed
709 \$1,000 per occurrence, or \$2,500 per occurrence if the advertisement occurred within 14
710 days of the election. In no event could a penalty for a single advertisement exceed \$10,000.
711 Chairman Alcorn asked if it was known when the advertisements ran. Commissioner Piper
712 noted the reason the Board did not hear television violations in the past was because of the

713 per-occurrence issue. Without knowledge of when an advertisement aired or how often it
714 ran, it was difficult to assess an appropriate penalty. The Commissioner asked Ms.
715 Birkenheier that because the Board was not positive the advertisement ran on television,
716 but knew that it was posted online, if the Board could assess penalties treating the ad as a
717 print media violation; Ms. Birkenheier said yes, the Board had that discretion. Chairman
718 Alcorn asked if the complaints were brought as television ads, and Ms. Schneider said they
719 were, with the complainant alleging multiple broadcasts throughout the Commonwealth.

720 Chairman Alcorn said because there was no proof the ads ran within the 14 days
721 prior to the election, and noted that neither campaign argued the advertisements weren't
722 television ads, it was appropriate to treat the advertisements as television violations rather
723 than print media. Ms. Birkenheier asked Ms. Schneider if she requested information on
724 the amount of broadcasts for each ad, and Ms. Schneider said yes, but did was not provided
725 any additional information. Chairman Alcorn moved *subject to the Board's authority*
726 *under the Code of Virginia §24.2-955.3, to find Ed Gillespie for Governor in violation of*
727 *§24.2-956 Stand By Your Ad print media disclosure requirements with regard to 2*
728 *advertisements, and is hereby assessed \$2,000.* Secretary McAllister seconded the motion.

729 Vice Chair Wheeler stated members of the General Assembly and the Division of
730 Legislative Services need to be careful when writing Code, and that candidates need to be
731 careful to observe what was written. The Vice Chair stated she believed the intent of the
732 law was to prevent the candidate or speaker's face, and the written disclosure, from being
733 obscured, and did not believe that happened in any of Mr. Gillespie's ads. Ms. Schneider
734 pointed the Board to the campaign finance summaries approved in 2015, which stated that
735 each violation would be assessed a fine of \$2,500, unless the advertisement was
736 disseminated in the 14 days prior to the election in which case the penalty would be
737 \$10,000. Ms. Schneider added that because the complaint reporting the advertisement
738 arrived over a month from the election, the violation did not occur within 14 days prior to
739 the election. Commissioner Piper noted that the summaries needed to be updated, as the
740 Code clearly stated that violations should not be more than \$1,000 per occurrence, or more
741 than \$2,500 per occurrence when within 14 days prior to the election, not to exceed \$10,000
742 overall. Vice Chair Wheeler asked how the term occurrence was being used, and Chairman
743 Alcorn recommended using the lowest definition, which constituted each advertisement as

one violation each, regardless of the number of times the advertisements ran. However, Commissioner Piper noted that §24.2-955.1 defined “occurrence” as “one broadcast of a radio or television political campaign advertisement.” Ms. Schneider added that in no event, regardless of the number of broadcasts, could the penalty for one advertisement exceed \$10,000.

Chairman Alcorn suggested keeping the penalty to \$2,000, with a \$1,000 fine for each of the two advertisements. Vice Chair Wheeler asked if the Board was going to disregard the request to withdraw from the parties, and Chairman Alcorn said yes. The Board then voted on the matter; Chairman Alcorn voted yea, Secretary McAllister voted yea, and Vice Chair Wheeler abstained. The motion passed 2:0:1.

Chairman Alcorn then moved *the Board recess for ten minutes*. The Board reconvened at 2:54 p.m.

The next hearing was regarding Joan Ziglar for Commonwealth’s Attorney. Ms. Schneider stated that ELECT recommended finding no violation because the challenged advertisement neither mentions a candidate nor an election, and therefore does not constitute an advertisement expressly advocating for a candidate or election. Chairman Alcorn moved *subject to the Board’s authority under the Code of Virginia §24.2-955.3, to find Joan Ziglar not in violation of Virginia’s campaign finance Stand By Your Ad laws*. Vice Chair Wheeler seconded the motion, and the motion passed 2 to nothing, as the Secretary was not present in the room for the vote.

The next hearing was regarding Virginia Gov Facts. Ms. Schneider recommended finding no violation, as the advertisement did not contain express advocacy. Chairman Alcorn moved *subject to the Board’s authority under the Code of Virginia §24.2-955.3, to find Virginia Gov Facts not in violation of Virginia’s campaign finance Stand By Your Ad laws*. Vice Chair Wheeler seconded the motion, and the motion passed 2 to nothing, as the Secretary was not present in the room for the vote.

The next hearing was regarding Virginia Freedom Caucus. Ms. Schneider said the three advertisements before the Board constituted print media advertisements, and had an incomplete disclosure. Ms. Schneider noted that because the publication referred to another candidate, an additional disclosure statement was required by §24.2-957.1. Chairman Alcorn asked if Virginia Freedom Caucus sent any explanation or attempted to

775 remediate the situation. Ms. Schneider answered that the group had a website, but was not
776 registered as a committee with ELECT. ELECT did not have a contact person to notify of
777 the hearing, but did send notification to a post office box. Ms. Schneider suggested that
778 the case may have to be recommended to the Commonwealth's Attorney for further action
779 because the group did not report or submit a Statement of Organization. Chairman Alcorn
780 observed that no violation occurred because the advertisements did not meet the current
781 definition of express advocacy. Chairman Alcorn moved *subject to the Board's authority*
782 *under the Code of Virginia §24.2-955.3, to find Virginia Gov Facts not in violation of*
783 *Virginia's campaign finance Stand By Your Ad laws.* Vice Chair Wheeler seconded the
784 motion, and the motion passed 2 to nothing, as Secretary McAllister was not present.

785 Vice Chair Wheeler thanked Ms. Schneider for the format and presentation of the
786 hearings. The Vice Chair reiterated the importance of educating candidates on campaign
787 finance rules. Chairman Alcorn agreed, stating the Virginia Benchmark Index Workgroup
788 would help establish areas of need to improve training and education.

789 Chairman Alcorn then moved to adjourn the meeting. Vice Chair Wheeler
790 seconded the motion, and the motion passed two to nothing. The meeting was adjourned
791 at approximately 3:07 PM. The next Board meeting will be on June 19, at 11:00 AM.

792
793 _____
794 Secretary

795
796 _____
797 Chair

798
799 _____
800 Vice Chair